

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JERVON RAY LUCAS,

Case No. 3:15-cv-00606-MMD-VPC

Plaintiff,

ORDER

v.

WARDEN BACA, et al.,

Defendants.

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On December 15, 2015, this Court issued an order denying the application to proceed *in forma pauperis*, without prejudice, because the application was incomplete. (Dkt. no. 3 at 1-2.) On January 5, 2016, the Court directed Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400.00 on or before February 12, 2016. (Dkt. no. 6 at 1.) The deadline has now expired and Plaintiff has not filed another application to proceed *in forma pauperis*, paid the full filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.

1 1992) (dismissal for failure to comply with an order requiring amendment of
2 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure
3 to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address);
4 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
5 comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
6 (dismissal for lack of prosecution and failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to
8 obey a court order, or failure to comply with local rules, the court must consider several
9 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
10 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
11 favoring disposition of cases on their merits; and (5) the availability of less drastic
12 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
13 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

14 In the instant case, the Court finds that the first two factors, the public's interest in
15 expeditiously resolving this litigation and the Court's interest in managing the docket,
16 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
17 in favor of dismissal, since a presumption of injury arises from the occurrence of
18 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
19 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor —
20 public policy favoring disposition of cases on their merits — is greatly outweighed by the
21 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that
22 his failure to obey the court's order will result in dismissal satisfies the "consideration of
23 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
24 *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to file another
25 application to proceed *in forma pauperis* or pay the full filing fee on or before February
26 12, 2016, expressly stated: "IT IS FURTHER ORDERED that if Plaintiff does not timely
27 comply with this order, dismissal of this action may result." (Dkt. no. 6 at 1-2.) Thus,
28 Plaintiff had adequate warning that dismissal would result from his noncompliance with

1 the Court's order to file another application to proceed *in forma pauperis* or pay the full
2 filing fee by February 12, 2016.

3 It is therefore ordered that this action is dismissed without prejudice based on
4 Plaintiff's failure to file another application to proceed *in forma pauperis* or pay the full
5 filing fee in compliance with this Court's December 15, 2015, and January 5, 2016,
6 orders.

7 It is further ordered that the Clerk of Court shall enter judgment accordingly.

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9 DATED THIS 29th day of February 2016.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE